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ABSTRACT

The relationship between nonresident tuition and decreasing student mobility may be altered in light of the 1973 Supreme Court decision that declared unconstitutional Connecticut's maintenance of a permanent nonresident classification for tuition purposes. This report looks at the impact of the Supreme Court decision on student residency requirements and tuition charges at public institutions. In relation to these decisions, current information on student mobility will be examined. Finally, the developments in interstate and regional cooperative arrangements to eliminate tuition differential and maximize educational resources are discussed. (Author/MJM)

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RESIDENT TUITION AND STUDENT MIGRATION: SOME RECENT PROBLEMS

by Carol Herrnstadt Shulman

In recent years, state institutions of higher education have claimed an increasing share of the student population. The appeal of these institutions is based, in part, on the relatively low tuition charged to state residents. Conversely, the higher tuition rates charged by state institutions to out-of-state students encourages these students to enroll in their own state's public colleges. These tuition regulations have contributed to the continuing decline of student migration across state borders (Fenske 1972; Carbone 1972; Wade 1970).[1]

This relationship between nonresident tuition and decreasing student mobility may be altered in light of the 1973 Supreme Court decision that declared unconstitutional Connecticut's maintenance of a permanent nonresident classification for tuition purposes (*Vlandis v. Kline*, __ U.S. __, 37 L. Ed. 2d 63, 1973). This issue of *Research Currents* will look at the impact of this Supreme Court decision on student residency requirements and tuition charges at public institutions. In relation to these findings, current information on student mobility will be examined. Finally, the developments in interstate and regional cooperative arrangements to eliminate tuition differentials and maximize educational resources will be discussed.

THE COURT'S VIEW

State and federal courts became involved in the problems of residency and tuition differentials when nonresident students, faced with rapidly rising tuition costs, began to question the discrimination they encountered in paying a tuition differential and to challenge their inability to change their status from that of nonresident to resident student (Carbone 1973). In June 1973, the Supreme Court handed down a decision that settles some questions in the resident-nonresident tuition controversy, while it poses new problems for educational administrators and institutional finances.

In *Vlandis v. Kline*, two students, Kline and Capatano, challenged the Connecticut statute that held an applicant's legal address at the time of application for admission to a public college determined the student's resident or nonresident status throughout the student's college career. One student, Kline, applied to the University of Connecticut from California and transferred there after her marriage to a life-long Connecticut resident. Under the Connecticut statute, she was classified as an out-of-state student, even though she had a Connecticut driver's license, her car was registered in Connecticut, and she was a Connecticut voter. The other student, Capatano, was an unmarried, graduate student at the University of Connecticut who applied to the University of Connecticut from Ohio and moved her residency from Ohio to Connecticut. Like Kline, she had a Connecticut driver's license, her car was registered in Connecticut, and she was a registered voter.

The Supreme Court held that Connecticut:

> . . . is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. (__ U.S. __, 37 L. Ed. 2d at 71.)

The Court also suggested some of the facts that may be considered as evidence of residency: a year-round Connecticut home, a Connecticut driver's license, car registration, voter registration, etc. But, while upholding Kline and Capatano's claims, the Court noted that the state need not classify as resident students all those who attend its institutions.

Vlandis also addresses the questions of (1) whether a state may require a reasonable waiting period to establish residency, and (2) whether a state may levy different tuitions for in-state and out-of-state students. On the first question, the Court refers to *Starnes v. Malkerson*, a 1970 case in which a Minnesota district court upheld (and the Supreme Court affirmed) a University of Minnesota regulation requiring bona fide residency in the state for one year prior to

[1]For purposes of this paper, the terms "migration" and "mobility" will be used interchangeably to describe student movement from a home state to another state to obtain a higher education. The terms "residency," "nonresident," and "resident" student shall refer to the legal domicile of the student for purposes of tuition.

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classification as a resident student. This regulation allows the student to use the time spent as a student in the state toward the establishment of residency. In contrast, the Connecticut regulation did not recognize time spent while a student as state residency for tuition purposes.

The Court in *Vlandis* did not directly rule on the issue of tuition differential, but it did comment that:

> The State's objective of cost equalization between bona fide residents and nonresidents may well be legitimate . . . (__ U.S. __, 37 L. Ed. 2d at 69).

and

> We fully recognize the right of [the State's] own bona fide residents to attend such institutions on a preferential tuition basis . . . (__ U.S. __, 37 L. Ed. 2d at 72).

However, it rejected the basis upon which Connecticut fixed residency permanently as the student's residency at the time of application for admission.

Recently, the Supreme Court confirmed the state's right to establish a durational residency requirement before granting resident status for tuition purposes. In *Sturgis v. Washington*, the court granted summary affirmation to a lower court decision that upheld the state of Washington's statute defining a resident student as one who has established a bona fide domicile in the state for other than educational purposes. The statute also requires the student to maintain that domicile for more than one year immediately preceding the beginning of the term for which he is registered as a resident student at a public institution. As in *Starnes*, students can attend school during the period in which they are establishing residency.

CHANGES IN TUITION INCOME

For public institutions, the Court ruling in *Vlandis* promises to severely limit tuition revenues, as students who were once permanently classified as nonresidents establish residency and qualify for in-state resident tuition rates. In a study conducted for the National Association of State Universities and Land-Grant Colleges (NASULGC) and the American Association of State Colleges and Universities, Robert Carbone (1973) estimated that the total actual income from nonresident tuition in public college and university budgets was between $250 and $300 million. In a later report Carbone suggested that the potential loss of income might be estimated at between $125 and $150 million a year for all public four-year institutions. This estimate assumes that freshmen and first-year graduate students comprise about half of all nonresident students at an institution, and that there will be smaller numbers of nonresidents in the sophomore, junior, and senior years due to transfers back to home states.

The loss of such a large amount of revenue suggests the extent to which a tuition differential does exist between resident and nonresident students. In fact, this differential at NASULGC institutions has almost doubled in the last eight years, going from a median differential of $423 to $802.50 (Carbone, 1973). For some states the tuition differential has proved to be financially advantageous. This situation occurs when a state exports more students to other states than it imports, and at the same time assesses high fees on students coming in from other states. Florida, for example, is in this position within the area covered by the Southern Regional Education Board:

> Florida exports more students to every other state within the region than it receives. However, due to the fact that Florida non-resident fees were the highest in the south, in 1971 ($1,500) . . . Florida realizes a net profit in its transactions with four-year institutions in Arkansas, Maryland, and Virginia, despite the fact that institutions in these states enroll . . . more Florida students . . . than these states send to Florida (Reichard 1973b).

As out-of-staters eliminate the tuition differential by changing to resident status, the original resident students may be affected by increases in their tuition fees. The current situation at the University of Michigan is a case in point. Following the decision in *Vlandis*, Michigan found that it would lose about $2.5 million in revenue due to changes in resident status. To cover this loss, as well as a loss of $600,000 from 1972-73 (thought to be caused by nonresident students who dropped out for six months to earn residence status under the old rules), and increased costs, Michigan raised tuition fees: 15 percent for all freshmen and sophomores; 24 percent for nonresident juniors and seniors; 30 percent for resident upperclassmen; and 20 percent for graduate students (Flemming 1973; National Association of State Universities and Land Grant Colleges 1973).

In addition, Michigan tightened its residency regulations. The new regulations indicate that students' applications for residency will be reviewed on an individual basis, although a one-year durational residency period is a requirement for all. The criteria for in-state tuition fall into two main sections: one set of circumstances has "probative value" for a claim of residency, and another set of circumstances "standing alone, shall not constitute sufficient evidence of domicile to effect" resident classification. The regulations do not specify what number or combination of criteria will qualify a student for resident tuition. The first set of criteria include the more difficult to establish proofs of residency, such as continuous presence in Michigan when not enrolled as a student, reliance upon Michigan financial sources for support, and long-term military commitments. The second group of criteria are more readily obtained: voting registration, employment in a student position, domicile in the state of a student's spouse, automobile registration, and other such evidence.

Michigan's action on the residency regulation question may indicate the beginning of a trend at public institutions toward stiffer and more precise residency regulations. In other states, public institutions have attempted to compensate for the loss of nonresident revenue by requesting the state legislature for additional funding, but the state legislatures' responses have been to establish residency criteria for tuition purposes (Reichard 1973b).

Recommendations for residency criteria have come from Robert Carbone, currently directing a study on tuition alternatives for the Ford Foundation, and from the Education Commission of the States (ECS). Carbone (1973) suggests several types of evidence that a student might present: fulfillment of a residency requirement; continuous or nearly continuous substantial employment; payment of state income taxes on income earned inside and outside the state; registration and voting in the state; registration of a motor vehicle; ownership of real property or evidence of rental payments; and involvement in activities that are primarily student-oriented. He also calls for a definitive administrative procedure to decide these cases.

The ECS model legislation, published in 1971, contains a provision reflected in the Michigan regulations:

> The domicile of any emancipated person receiving regular financial assistance from his parent, or whose parent's income was taken into account by any private or governmental agency furnishing financial educational assistance to such person . . . is that of his parent (Model Legislation . . . 1971).

While it may be doubtful that this criterion alone would validly determine a student's residence, it may appear in an institution's set of residency qualifications.

STUDENT MIGRATION PATTERNS

Although millions of dollars in nonresident tuition may be involved in the residency-nonresidency controversy, the number of college students out of the total college student population that actually crosses state borders is small. In 1971, only 463,357 out-of-state students were enrolled in publicly controlled four-year institutions, but the total population in these institutions was 4,438,442 (Carbone 1972).

Moreover, the number of mobile students is declining (Fenske 1972). In its 1968 report on residency and migration of college students, the National Center for Educational Statistics found that 83 percent of American students enrolled in the U.S. remained in their home states. This represented a 2 percent decline in mobility in the 1963-68 period, the last time such a study was conducted (the next report is due in early 1974). This decline is caused by a number of factors, the most prominent of which is the increase in the number of public institutions. While mobile students declined by 2 percent between 1963 and 1968, the number of students in public institutions as a percentage of the total college student population rose from 62.3 percent to 70 percent (Wade 1970).

Another significant barrier to student mobility is the higher tuition rate charged to out-of-state students. Carbone (1972a) reports that the substantial increase in tuition differentials at state and land-grant institutions does not affect migration to the major institutions but has inhibited out-of-state enrollment at smaller state colleges and universities. Another writer (Fenske 1972) cites a report that shows a significant decrease in enrollment at the University of Wisconsin as a result of major increases in nonresident tuition. For example, at Wisconsin a nonresident quota of 20 percent for the 1970 freshman class was established, but only 17.9 percent enrolled.

In the discussion of state-created barriers to mobility and statistical data, little attention is given to the personality profiles of the students who cross state borders. Such profiles can provide useful information on the composition of student bodies with substantial numbers of nonresident students, and a recent study examines the relationship between student mobility and students' personal backgrounds. In the first national longitudinal study of its kind, the authors (Fenske 1972) selected two groups of entering freshmen from the students who took the American College Testing Program's Assessment between October 1, 1965 and August 30, 1966, and between those same dates in 1968 and 1969. The first sample included 32,351 students from 796 colleges in 39 states; the second sample was of 50,205 students from 1,103 colleges in 45 states. The authors divided each sample into four patterns of enrollment: (1) local attendance; (2) attendance within the state; (3) attendance in an adjacent state; and (4) attendance in a distant state. The authors found that between the first and second sample there were increases of 1.4 percent and 0.6 percent in categories one and two, respectively, and decreases of 1.4 percent and 0.6 percent in categories three and four. In both samplings, the characteristics of students who crossed state borders included: above average ACT Composite Scores; expectations at or beyond a bachelor's degree; a rural or suburban home community; a moderate-to-high family income; no plans for part-time work; little emphasis placed on "low cost" or "desirable location," and greater importance attached to considerations such as "national reputation" and "special curriculum." The converse of these characteristics was true for those students who attended college within their home state. As a result of their findings, the authors suggest that there appears to be developing an undesirable movement toward stratification of higher education based on socioeconomic factors.

FUTURE TRENDS IN STUDENT MOBILITY PATTERNS

As a result of *Vlandis*, some administrators in higher education are seeking new geographical patterns in college attendance that will take into account the comparative ease with which a student may establish a new domicile for tuition purposes. Thus, there is discussion both of new efforts towards regional cooperation and new methods of assessing tuition.

For example, the adjoining states of Minnesota and Wisconsin have recently implemented a reciprocity agreement that waives all barriers to public postsecondary education for residents of one state who wish to attend school in the other state. This agreement replaces earlier ones of 1969-70 and 1970-71 that enabled more than 300 students from each state to cross into the other state, and a 1972-73 agreement that increased this number to 600 from each state (Minnesota Higher Education Commission 1973). The current agreement applies to students at all levels in both states. Tuition, fees, and admissions requirements apply equally to Minnesota and Wisconsin residents and, with the exception of the University of Minnesota's School of Veterinary Medicine, there are no quotas on the number of students who may be admitted from the neighboring state. Preliminary figures for student exchanges under this new agreement indicate that as of October 18, 1973, 2,271 Minnesota residents enrolled in Wisconsin, and 1,273 Wisconsin residents enrolled in Minnesota. This rough two-to-one ratio has remained the same during the three years of reciprocity between the two states (Laird 1973). The new agreement calls for an annual accounting to deal with the financial losses caused by a net out-migration: the state with the largest net tuition loss (the difference between the total nonresident tuition and the actual resident tuition paid) receives "an amount determined by subtracting the net tuition loss of the state making the payment from the net tuition loss of the state receiving the payment" (Minnesota-Wisconsin . . . 1973).

In another exchange program to encourage student mobility and better utilization of resources, the Southern Regional Education Board will launch an "Academic Common Market" for its region in the fall of 1974. This program will apply only to graduate students and does not involve any exchange of dollars among the 12 participating states[2] (Texas and Louisiana are currently not included). The states

[2]These states are: Alabama, Arkansas, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

will select the programs they want to include in the market. Generally, these are expected to be programs that are underutilized in their own states and that are not available in other states in the region. In-state tuition will be charged to all students, and it is expected that the participating states will benefit from the maximization of their resources. SREB will administer the program regionally, and there will be an administrator in each state responsible for coordinating the market activities (SREB 1973b).

These regional efforts may provide some relief for institutions by promoting full utilization of resources and by resolving on a limited scale the problem of resident-nonresident tuition. But it appears that public institutions in general need to find other solutions for coping with the changes in resident-nonresident status and institutional finances that *Vlandis* will bring.

Recognizing the developing problem for public institutions, Robert Carbone is directing a study of alternative tuition plans, funded by the Ford Foundation and sponsored by the National Association of State Universities and Land-Grant Colleges and the American Association of State Colleges and Universities. The study, due to be completed in July 1974, will examine alternative methods of levying tuition and discuss the implications of each method, including their potential effect on student migration patterns. In addition, Carbone will examine current factors that provide a background to changes in tuition models:[3] the *Vlandis* decision, and new age-of-majority and voting laws.

In short, new methods of tuition assessment must be found to compensate for large losses of revenue from nonresidents who qualify to pay resident fees. In the alternative, public universities could raise in-state tuition charges even higher than they are presently. Whether the institutions will choose a solution that encourages student migration or that accelerates the trend toward nonmigration remains to be seen.

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[3]The study proposal lists six possible tuition alternatives: 1. tuition based on full cost of instruction for all students; 2. full cost of instruction with four-year tuition vouchers for all students who graduated from an in-state high school; 3. full cost tuition in freshman year, gradually decreasing in succeeding years, with one-year tuition vouchers for graduates of in-state high schools; 4. a national student tuition "bank" that would administer cost-of-educational payments from state governments in lieu of individual nonresident tuition payments; 5. state, regional, or national student exchange programs that would equalize in-and-out migration and thus eliminate the need for differential tuition charges; 6. nonresident tuition based on some form of income contingency that would assess higher fees from nonresident students who do not choose to maintain extended residence in the state after completion of college work.

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